

December 14, 2012

To: Executive Board

Subject: **Board Payroll Process**

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## **Recommendation**

Direct the Executive Director to:

- A. Implement a process whereby Foothill Transit Executive Board members and Alternates are paid and reported to the Internal Revenue Service (IRS) as Foothill Transit employees; or
- B. Implement a process whereby Foothill Transit Executive Board members, Executive Board Alternates and all other Governing Board members including Governing Board Alternates are paid and reported to the IRS as Foothill Transit employees; or
- C. Maintain the current payment process whereby Governing Board members, Executive Board members and Alternates are paid as outside contractors.

## **Analysis**

At the September 28, 2012 Executive Board meeting, the Board considered a change to the processing of payments to Board Members for their participation at required meeting as employees of the agency. The Executive Board directed that a request be made for a clarification/determination from the IRS using Form SS-8 (Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholdings). Because of the differences between the method of selection of the Executive Board members and Alternates versus those of the remaining Governing Board members, on October 5, 2012 two forms were completed and sent to the IRS. The forms were subsequently received by the IRS on October 10, 2012. The Executive Board also directed that an update be provided at the December Executive Board meeting.

The IRS has not provided a response to our request (Form SS-8) for a determination on the worker status of Foothill Transit's board members; however information was recently received indicating IRS Code section 3401 (c) may be applicable to determining their worker status. Section 3401 (c) states: the term "employee" includes an officer, employee, or elected official of the United States, a state, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the forgoing. This would appear to indicate the Executive Board members and their Alternates are employees by virtue of being elected and the remaining Governing Board members may not be employees because they were appointed, not elected. Since a response from the IRS to Form SS-8 has not been received, it is likely a response will not arrive before a decision has to be made by the Executive Board as to their worker status to process a payroll before the end of the current calendar year.

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A payroll account has been established with ADP to ensure a payroll process is in place should the Executive Board determine that they, along with the Executive Board Alternates and/or Governing Board members, are employees and should be paid as such. It should be noted that once the Governing Board, Executive Board and/or alternates are paid as employees the decision cannot be reversed.

The costs to process a payroll include approximately \$100 per payroll for the outside processor with additional costs for employer Social Security, State Unemployment Insurance and State Disability Insurance. These costs will vary based on the total dollar amount of payroll. A monthly payment procedure utilizing direct deposit is proposed as this will assure the most economical and timely payroll processing and eliminate possible lost payroll checks.

### Budget Impact

The services of an outside payroll processor are estimated at approximately \$100 per payroll. Other additional costs will vary based on the total dollar amount of payroll and are estimated at approximately \$200 per payroll.

Sincerely,



Richard Hasenohr  
Director of Finance



Doran J. Barnes  
Executive Director